

Appl. No. 09/963,820  
Atty. Docket No. CM2436  
Amdt. dated March 31, 2004  
Reply to Office Action of December 2, 2003

### **REMARKS**

Claims 15-20 are now in the case.

Applicants have amended claim 15 which now includes the feature of an inlet located at a bottom surface of the cleaning device.

Each of these amendments is supported by the specification, claims and drawings (see Fig. 1) as filed.

### **Rejection under 35 U.S.C. § 103**

Claims 15 and 17-19 have been rejected under 35 U.S.C. § 103(a) as being obvious over Kanetsuma '338 in view of Helmstreit '738.

Applicants overcome the rejection in view of the following remarks.

Applicants have amended claim 15, which now includes the feature of an inlet located at a bottom surface of the device.

Applicants submit that claim 15 is directed to a floating device for cleaning a bathtub wherein the liquid inlet and the jet-nozzle are below the surface level of the liquid contained in the bathtub.

The office action stated that "Helmstreit discloses the missing element and explicitly provides the motivation for making the claimed combination."

Applicants respectfully disagree.

As best understood by Applicants, Helmstreit '738 discloses a floating device for surface water filtering and cleaning. This device removes leaves, dead insects, etc. before they sink to the bottom of the pool where they are out of the reach of circulation pumps.

Applicants note that in Figs 1 and 2 of Helmstreit '738, element 11 appears to be an inlet used by the floating device of Helmstreit '738 to remove leaves, dead insects, etc... that are located at the surface level of the water contained in a swimming pool.

Applicants submit that it is basic patent law that "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some **suggestion or**

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**motivation ... to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure."** (Emphasis added) *In re Vaeck*, 947 F.2d 488, USPQ 2d 1438 (Fed Cir. 1991).

Applicants remind the Examiner that "[w]hen applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (1) The claimed invention must be **considered as a whole**; (2) the reference must be considered as a whole and must suggest the desirability and thus the obviousness of making the contribution; (3) the reference must be viewed **without the benefit of impermissible hindsight vision afforded by the claimed invention** and (4) reasonable expectation of success is the standard with which obviousness is determined." (Emphasis supplied) *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187, n.5 (Fed. Cir. 1986). MPEP 2141, MPEP 2141.02.

In short, the "invention as a whole" test under 35 USC 103 requires the Examiner to take into consideration the fact that Helmstreit '738 teaches away from a cleaning device having an inlet located at a bottom surface of the device and U.S. '221 does not suggest the desirability of a cleaning device having a liquid inlet and a jet-nozzle that are below the surface level of the liquid contained in a bathtub, as in the present invention. See especially, MPEP 2141.02.

Claims 16 and 20 have been rejected under 35 U.S.C. § 103(a) as being obvious over Kanetsuma '338 in view of Helmstreit '738 and further in view of Henkin '886.

For the sake of brevity, Applicants submit that the same arguments presented in the previous section with regards to the rejection of claims 15 and 17-19, also apply to the rejection of claims 16 and 20

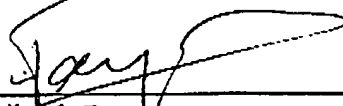
Reconsideration and withdrawal of the rejection are therefore respectfully requested.

It is submitted that all the claims are in condition for allowance. Early and favorable action on all claims is therefore requested.

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If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,  
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